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November 4, 1980

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ARIZONA ATTORNEY GENERAL

INTERAGENCY
The Honorable John Ahearn
Arizona Corporation Commission
1210 West Washington
Phoenix, AZ 85007

Re: I80- 185 (R80-218)

Dear Mr. Ahearn:

In your letter of September 19, 1980, you asked for the opinion of this office regarding the following question:

Does the Arizona Corporation Commission have jurisdiction over mobile home park owners who charge a flat rental, with utilities included?

Pursuant to Article 15, §§ 2 and 3 of the Arizona Constitution, a "public service corporation" is subject to the regulatory jurisdiction of the Corporation Commission. The question thus becomes whether a mobile home park owner who furnishes utilities to his tenants and makes only one monthly charge for space rental and all services rendered is subject to the jurisdiction of the Commission as a "public service corporation".^{1/}

The Supreme Court of Arizona had occasion to consider this question in Arizona Corporation Commission v. Nicholson, 108 Ariz. 317, 497 P.2d 815 (1972). In this case a trailer park furnished water to its tenants for domestic consumption and passed the cost on to the tenants by imposing only one monthly charge against the renters for space rental and all services provided. Further, the rental of space in the park was not

1. It is implicit in your question, and we are assuming, that the mobile home park owner serves only persons renting trailer spaces in the park. Further, since this is a private park, we are assuming that the owner may exercise some discretion over who may rent space in the park.

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available to all, but was subject to discretionary restrictions by the park owners. The court stated that, under these circumstances, the furnishing of water was incidental to the business of renting trailer spaces. The court went on to hold as follows:

Similarly in this case the plaintiffs' incidental but necessary water service, while engaged in the private enterprise of renting trailer spaces, in no way brings them under the Commission's regulation. While clearly it must be assumed that the cost to plaintiffs of the water system is taken into consideration, only one monthly charge for all services was rendered. Furthermore, the park clearly is not open to all. Not only are there rather discretionary restrictions of compatibility with other tenants, but also trailer size and make restrictions.

108 Ariz. at 321.

Accordingly, in answer to your question, it is our opinion that a mobile home park owner who serves utilities to his tenants only and imposes one monthly charge against the renters for space rental and all services provided is not subject to the jurisdiction of the Corporation Commission as a public service corporation.

Sincerely,



BOB CORBIN
Attorney General

BC:TP:lfc